

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of CA-CLEC LLC  
(U-6936-C) for Modification of its Certificate of  
Public Convenience and Necessity to Comply  
with the California Environmental Quality Act.

Application 05-12-003  
(Filed December 2, 2005)

**OPINION GRANTING MODIFICATION OF  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY****I. Summary**

CA-CLEC LLC. (Applicant) seeks an expansion of its existing certificate of public convenience and necessity (CPCN)<sup>1</sup> under Pub. Util. Code § 1001 to obtain authority to perform certain underground and aerial construction (the project) needed in order for Applicant to serve a specific customer. We grant Applicant a full facilities-based CPCN and authorize the project as described in the application, subject to the requirements and conditions stated below. We also find that the project as described in this application is exempt from further environmental review under the California Environmental Quality Act (CEQA).

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<sup>1</sup> In Decision (D.) 05-01-021, we granted Applicant, then named Crown Castle Solutions Corp., a CPCN authorizing the provision of limited facilities-based and resold local exchange and interexchange services in this state. According to the Application, pursuant to Advice Letters Nos. 3 and 4, Applicant now holds the CPCN in the name of CA-CLEC LLC.

However, if Applicant wishes to engage in any additional full facilities-based construction activities beyond those described in the application, Applicant must first obtain Commission authorization and undergo such environmental review as may be required by CEQA. We also specify a procedure to be followed if Applicant wishes to pursue additional full facilities-based construction projects that involve CEQA exemptions in the future.

## **II. Background**

Applicant, a Nevada limited liability company, seeks Commission authorization to perform underground and aerial construction in the City of Saratoga in order to serve a specific customer. Applicant's principal place of business is located at Canonsburg, Pennsylvania.

In order to serve its customers, Applicant uses a system of radio access nodes or microcell antennas linked by fiber optic cables to conversion equipment attached to poles and other structures. Here, in order to reach a specific customer, Applicant needs to build new underground conduit and install fiber optic cable within public rights-of-way at two locations and must also build approximately four miles of aerial fiber optic plant on existing utility poles in public rights of way within the City of Saratoga. Applicant contends that since the project falls within various exemptions to CEQA, no additional environmental review is required.

The first underground segment will be located at the intersection of Mendelsohn Way and Piedmont Road and will consist of 648 feet of underground construction. The second underground segment consists of 828 feet of underground construction on Saratoga-Los Gatos Road near Oak Street.

The aerial route includes: (1) a fiber run of 2.75 miles that parallels Highway Route 9 from Monte Sereno to Saratoga, and (2) a 0.5 mile fiber run up Quito Road, and (3) a 0.5 mile fiber run along Mendelsohn Lane.



Applicant states that it has unsuccessfully searched for alternatives to the project and that unless this application is granted, Applicant's ability to compete and deliver service to a customer who is waiting for connectivity is at risk. Applicant also states that although several other wireless carriers already own cell sites and towers within the area, their facilities do not cover the entire area; and Applicant's projects, when combined with its existing facilities, will eliminate the coverage gap for customers.

Although Applicant has not requested a full facilities-based CPCN, the scope of the project exceeds Applicant's authority under its current CPCN.<sup>2</sup> We therefore construe Applicant's application as a request for the issuance of a full facilities-based CPCN, with authorization to pursue the project as described in the application.

The requirements for the expanded CPCN authority requested by Applicant here are the same as those previously met by Applicant for its existing CPCN (U-6936-C), except for the requirements of CEQA, as applied to any proposed full facilities-based construction by Applicant. Therefore, the only issue before us in this application is whether the project is exempt from CEQA and should be approved.

### **III. Environmental (CEQA) Review**

The California Environmental Quality Act (CEQA, Public Resources Code Section 21000 et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential significant

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<sup>2</sup> Under its existing CPCN (U-6936-C) which permits Applicant to provide limited facilities-based and resold services, Applicant is not authorized to construct facilities, other than equipment to be installed in existing buildings and structures. (See D.05-01-021, Ordering Paragraph 8.)

environmental effects of the proposed activities.” (Title 14 of the California Code of Regulations, hereafter CEQA Guidelines, Section 15002.)

Since the Commission must issue a discretionary decision (i.e., grant Section 1001 certificate authority) without which the proposed activity will not proceed, the Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines Section 15051(b)). The Commission is the Lead Agency for this project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval.

Applicant seeks a determination from the Commission that the project which Applicant seeks to construct pursuant to its existing CPCN is exempt from CEQA review because at least one, if not several, existing categorical exemptions within the State CEQA Guidelines applies to the project. Applicant filed this application in December, 2005. In its application, Applicant outlines the project it wishes to construct and describes the types of proposed facilities and their geographical location and extent. The application provides adequate information to determine the degree of impact on the environment resulting from the project and the degree to which the project may be exempt from further CEQA review.

Applicant states that its business activities associated with the installation of its facilities are of such a limited physical nature that they should potentially qualify for a number of categorical exemptions available under CEQA. In its application, Applicant supports its case by providing a description of the types of facilities and physical activities involved in constructing the project.

Applicant states that the physical activities contemplated in the underground and aerial construction portions of the project should qualify for a number of the existing categorical exemptions available under the State CEQA

Guidelines. Upon review of the application, the Commission Energy Division CEQA staff (CEQA staff) concur that the project activities contemplated by Applicant do indeed fall within the bounds of the categorical exemptions provided for in the State CEQA Guidelines and that the application of specific exemptions to the project is appropriate. The CEQA staff have concluded that the following exemptions apply to the project, as described in this application: Section 15301(b) – Existing Facilities; Section 15303(d) – New Construction; Section 15304(c)(f); and Section 15332 – In-Fill Development. Therefore, the CEQA staff has concluded that it is appropriate for Applicant to receive an exemption from CEQA for the project; that such an exemption should be granted pursuant to CEQA Guidelines Section 15061(b)(2); and that no further CEQA review is required for the project, as described in the application.

However, if Applicant wishes to engage in any additional construction activities beyond the project described in this application, Applicant must first apply for Commission authorization and undergo such environmental review as may be required by CEQA. If in the future, Applicant wishes to pursue full facilities-based construction projects which it believes are exempt from CEQA, Applicant shall follow the procedures below for obtaining Commission review, and approval or disapproval, of claimed CEQA assumptions:

- Applicant will provide the Commission Energy Division with:
  - A detailed description of the proposed project, including:
    - Customer(s) to be served
    - The precise location of the proposed construction project
    - Regional and local site maps

- A description of the environmental setting, including at a minimum:
  - Cultural, historical, and paleontologic resources
  - Biological resources
  - Current land use and zoning
- A construction workplan, including:
  - Commission Pre-Construction Survey Checklist – Archaeological Resources
  - Commission Pre-Construction Survey Checklist – Biological Resources
  - A detailed schedule of construction activities, including site restoration activities
  - A description of construction/installation techniques
  - A list of other agencies contacted regarding siting , land use planning, and environmental resource issues, including contact information
  - A list of permits required for the proposed project
- A statement of the CEQA exemption(s) claimed to apply to the proposed project; and
- Documentation supporting the finding of exemption from CEQA.
- The Commission Energy Division will then review the submittal and notify Applicant of either its approval or its denial of Applicant's claim for exemption from CEQA review within 21 days from the time that Applicant's submittal is complete.
- If the Commission Energy Division approves Applicant's claimed CEQA exemption(s), the staff will prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- If the Commission Energy Division disapproves Applicant's claimed CEQA exemptions, the staff will issue to Applicant a

letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.

- If the Commission Energy Division disapproves Applicant's claimed CEQA exemption(s), Applicant shall either re-design the specific project and facilities and then reapply for a finding of exemption from CEQA, or file a formal application with the Commission seeking the requisite approval and full CEQA review, before commencing any full facilities-based construction activities.

We make this procedure available to Applicant, in order to facilitate any future facilities-based projects that may involve CEQA exemptions.

We also note that the Commission is reviewing CEQA issues affecting telecommunications providers generally on a broader, policy level in Rulemaking (R.) 00-02-003. Applicant may follow the above procedure unless and until the Commission adopts different requirements applicable to Applicant in R.00-02-003 or a subsequent proceeding.

#### **IV. Conclusion**

We conclude that the application conforms to our rules for authority to provide full facilities-based local exchange and interexchange telecommunications services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein. Applicant remains subject to the requirements of D.05-01-021, its licensing decision.

#### **V. Categorization and Need for Hearings**

In Resolution ALJ 176-3164 dated December 12, 2005, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given



these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

## **VI. Comments on the Draft Decision**

No protests were filed in this proceeding. Therefore, this is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

## **VII. Assignment of Proceeding**

John Bohn is the Assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

## **Findings of Fact**

1. Notice of this application appeared in the Daily Calendar on December 16, 2005.
2. No protests were filed.
3. Hearings are not required.
4. The Commission is the Lead Agency for this project under CEQA.
5. Applicant seeks Section 1001 facilities-based certificate authority to install and operate underground and aerial facilities.
6. The application provides detailed information on the degree to which the project implicates CEQA.
7. Applicant contends that its business activities associated with the installation of its underground and aerial facilities are of such a limited nature that they should potentially qualify for a number of categorical exemptions available under CEQA.

8. Applicant has provided a number of examples of existing CEQA categorical exemptions that would potentially apply to the installation of Applicant's proposed aerial and underground facilities.

9. Applicant's proposed facilities-based project activities are indeed of a limited nature and qualify for an exemption from CEQA.

10. The project should be exempted from further CEQA review pursuant to State CEQA Guidelines Section 15061(b)(2).

11. Applicant has met the requirements for issuance of a CPCN authorizing the provision of full facilities-based local exchange and interexchange services.

### **Conclusions of Law**

1. Except for the requirement for additional environmental (CEQA) review, the requirements for a full facilities-based CPCN are generally the same as for a limited facilities-based CPCN.

2. The scope of the project, as described in the application, exceeds Applicant's authority under its existing CPCN, which authorizes the provision of limited facilities-based and resold local exchange and interexchange services.

3. The project, as described in the application, is exempt from additional environmental review under CEQA.

4. Applicant must obtain advance Commission authorization and undergo the requisite environmental review under CEQA before undertaking any full facilities-based construction activities beyond the project as described in the application.

5. If in the future, Applicant wishes to pursue additional full facilities-based construction projects which it believes are exempt from CEQA, Applicant shall follow the procedures below:

- Applicant will provide the Commission Energy Division with:

- A detailed description of the proposed project, including:
  - Customers to be served
  - The precise location of the proposed construction project;
  - Regional and local site maps
- A description of the environmental setting, including at a minimum:
  - Cultural, historical, and paleontologic resources
  - Biological resources
  - Current land use and zoning
- A construction workplan, to include:
  - Commission Pre-Construction Survey Checklist – Archaeological Resources
  - Commission Pre-Construction Survey Checklist – Biological Resources
  - A detailed schedule of construction activities, including site restoration activities;
  - A description of construction/installation techniques
  - A list of other agencies contacted regarding siting, land use planning, and environmental resource issues, including contact information
  - A list of permits required for the proposed project
- A statement of the CEQA exemption(s) claimed to apply to the proposed project; and
- Documentation supporting the finding of exemption from CEQA.
- The Commission Energy Division will then review the submittal and notify Applicant of either its approval or its denial of Applicant's claim for exemption from CEQA review. The staff of the Energy Division will make reasonable efforts

to complete this review within 21 days from the time of Applicant's submittal.

- If the Commission Energy Division approves Applicant's claimed CEQA exemption(s), the staff will prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- If the Commission Energy Division disapproves Applicant's claimed CEQA exemptions, the staff will issue to Applicant a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.
- If the Commission Energy Division disapproves Applicant's claimed CEQA exemption(s), Applicant shall either re-design the specific project and facilities and then reapply for a finding of exemption from CEQA, or file a formal application with the Commission seeking the requisite approval and full CEQA review, before commencing any construction activities.

6. Applicant may follow the above procedure unless and until the Commission adopts different requirements, applicable to Applicant, for obtaining review and approval of claimed CEQA exemptions in R.00-02-003 or a subsequent proceeding.

7. Public convenience and necessity require Applicant's full facilities-based local exchange and interexchange services to be offered to the public subject to the terms and conditions set forth herein.

8. The application should be approved.

9. Upon approval of the application, Applicant should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

10. Application should remain subject to the requirements of D. 05-01-021, its licensing decision.

11. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

**O R D E R****IT IS ORDERED** that:

1. A certificate of public convenience and necessity is granted to CA-CLEC (Applicant) to operate as a full facilities-based provider of local exchange services in the service territories of Pacific Bell Telephone Company, Verizon California, Inc., SureWest Telephone, and Citizens Telephone Company and interexchange services statewide, subject to the terms and conditions set forth below. This authorization expands Applicant's existing authority to provide limited facilities-based and resold local exchange and interexchange services.

2. Applicant is authorized to construct the underground and aerial facilities as described in the application (the project) without additional environmental review under the California Environmental Quality Act (CEQA).

3. Applicant shall not commence or undertake any additional construction activities beyond the project as described in the application without first obtaining Commission authorization and undergoing the requisite environmental review under CEQA.

4. If in the future, Applicant wishes to pursue additional full facilities-based construction projects which it believes are exempt from CEQA, Applicant shall follow the procedures below:

- Applicant will provide the Commission Energy Division with:
  - A detailed description of the proposed project, including:
    - Customer(s) to be served
    - The precise location of the proposed construction project;
    - Regional and local site maps
  - A description of the environmental setting, including at a minimum:

- Cultural, historical, and paleontologic resources
- Biological resources
- Current land use and zoning
- A construction workplan, including:
  - Commission Pre-Construction Survey Checklist – Archaeological Resources
  - Commission Pre-Construction Survey Checklist – Biological Resources
  - A detailed schedule of construction activities, including site restoration activities
  - A description of construction/installation techniques
  - A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information
  - A list of permits required for the proposed project
- A statement of the CEQA exemption(s) claimed to apply to the proposed project; and
- Documentation supporting the finding of exemption from CEQA.
- The Commission Energy Division will then review the submittal and notify Applicant of either its approval or its denial of Applicant's claim for exemption from CEQA review within 21 days from the time that Applicant's submittal is complete.
- If the Commission Energy Division approves Applicant's claimed CEQA exemption(s), the staff will prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- If the Commission Energy Division disapproves Applicant's claimed CEQA exemptions, the staff will issue to Applicant a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.

- If the Commission Energy Division disapproves Applicant's claimed CEQA exemption(s), Applicant shall either re-design the specific project and facilities and then reapply for a finding of exemption from CEQA, or file a formal application with the Commission seeking the requisite approval and full CEQA review, before commencing any construction activities.

5. The staff of the Energy Division is authorized to review, process, and respond to Applicant's requests for exemptions from CEQA under the above procedure.

6. Applicant may follow the above procedure unless and until the Commission adopts different requirements, applicable to Applicant, for obtaining review and approval of claimed CEQA exemptions in R.00-02-003 or a subsequent proceeding.

7. Applicant shall not engage in any construction activity related to a pending exemption request under the above procedure prior to receiving a Notice-to-Proceed (NTP) from the Energy Division staff or otherwise undergoing the requisite environmental review and receiving approval from the Commission.

8. Applicant remains subject to the requirements of Decision 05-01-021, its licensing decision.

9. The certificate granted and the authority to render service under the rates, charges, and rules authorized herein will expire if not exercised within 12 months after the effective date of this order.

10. The corporate identification number assigned to Applicant, U-6936-C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

11. Application 05-12-003 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.